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Corporate Transparency Act: FinCEN beneficial owner information report requires street address of principal place of business

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Introduction

As families and their advisers begin to prepare for US entities in their succession planning structures to comply with the Corporate Transparency Act 2021 (CTA), consideration should be given to US holding companies and the requirement to report a business street address. This article sets out details provided in the "Supplementary Information" section of final regulations issued by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). The Supplementary Information sheds light on the business street address requirement and comments received by FinCEN. This article also describes options and considerations for complying. It should be noted that requirements may change as FinCEN releases further guidance and frequently asked questions (FAQs).

CTA

The CTA is a federal law enacted 1 January 2021 as part of the National Defense Authorization Act. A review of all US entities in a succession planning structure will quickly determine which entities must comply with the CTA. US corporations, limited liability companies and statutory partnerships must all file to be included on the FinCEN beneficial owner register, unless an exemption applies. Most holding companies will not be exempt as they generally are not registered with the Securities Exchange Commission or will not meet the definition of a large operating company (for further details please see "[Complying with new US FinCEN beneficial owner register: substantial control and 25% ownership interest tests](#)", "[Using 2023 to get ready to comply with new US FinCEN beneficial owner register](#)" and "[Reporting beneficial owners of certain US companies: details of new Corporate Transparency Act](#)").

Proposed regulations add business street address requirement

The CTA itself sets forth the basic outline of required beneficial owner information (BOI). FinCEN issued final regulations 29 September 2022, which fill in the specifics. Prior to issuing final regulations, FinCEN released proposed regulations and asked for public comment.

In order to ensure that each reporting company can be identified, FinCEN's proposed regulations provided that each reporting company submit the following details for the company itself:

- the full name;
- any trade name or "doing business as" name;
- the business street address;
- the state or tribal jurisdiction of formation; and
- the tax identification number.

Comments on business street address

Following the issuance of the proposed regulations, FinCEN received numerous comments. Commenters raised concerns that a reporting company might list the address of its registered agent or other third party as its "business street address," rather than its principal place of business or actual physical location. Suggestions were made to provide clarity around the concept of business street address, recognising that a reporting company might have multiple business street addresses. Some commenters felt that FinCEN should not permit the use of post office (PO) boxes because it would increase ambiguity about the location of a reporting company and could allow it to hide its location and activities.

Conversely, other commenters noted challenges, particularly during the covid-19 pandemic, to requiring a business street address.

These commenters pointed out that businesses often:

- operate from a residential address;
- have no need for an established physical presence (eg, many internet companies); or
- use PO boxes where there is no fixed business location or when a business is newly formed.

Additional comments provided alternatives and requested final regulations that would permit disclosure of:

- the company formation agent's address;
- a physical street address where records are located; or
- a care of address.

A number of commenters noted that the requirement to disclose a business street address for a foreign reporting company also needed clarification. In particular, commenters raised the question of whether such foreign entities needed to report a US address, a foreign address or both.

Final regulations require street address of principal place of business

FinCEN's final regulations make certain changes to clarify the requirement that the reporting company provide a business street address. Specifically, the final regulations state that a reporting company must include a complete current address consisting of:

- the street address of the reporting company's principal place of business, in the case where that principal place of business is in the United States; and
- in all other cases, the street address of the primary location in the United States where the reporting company conducts business.

FinCEN adopted the suggestion made by many commenters to require the address of the "principal place of business" given the potential ambiguity of "business street address" in cases in which a business may have multiple locations.

For a reporting company with a principal place of business outside of the United States, the final regulations specify that the reporting company must provide the street address of the primary location in the United States where the reporting company conducts business. FinCEN believes this requirement "will help to ensure that law enforcement and national security agencies are able to associate a reporting company that operates principally outside of the United States with the location where it operates in the United States".

FinCEN considered comments suggesting that, in the case of a reporting company with a foreign principal place of business, FinCEN should either require or allow for voluntary reporting of a foreign address, in addition to a US address. FinCEN ultimately determined that limiting the address requirement to a street address in the United States would be sufficient for identification purposes and would minimise burdens associated with this reporting requirement. FinCEN also believes that "having a US address for a reporting company would also enable law enforcement to reach a point of contact more effectively in case of an inquiry or investigation".

PO box, registered agent, third party or c/o address not sufficient

FinCEN's final regulations continue to require the reporting company to provide its street address. FinCEN's position is that this requirement is not satisfied by reporting a PO box or the address of a company formation agent or other third party. FinCEN believes that:

reporting such third-party addresses would create opportunities for illicit actors to create ambiguities or confusion regarding the location and activities of a reporting company and thereby undermine the objectives of the beneficial ownership reporting regime.

The final regulations and FinCEN's Supplementary Information commentary do not address the variety of situations in which there may be questions about the principal place of business of a reporting company – most glaringly, in the case of a holding company that genuinely does not require a bricks and mortar street address. FinCEN says it will consider future guidance or FAQs to address such questions.

Options and practical considerations for complying

The reporting company's current US address (number, street and apartment or suite number) is a required field of the BOI report data fields. Pursuant to FinCEN's summary of these fields released in January, there is no option to mark "unknown" or "not applicable" as regards the address. FinCEN invited, but has not yet released, comments on the proposed data fields.

Unless FinCEN provides some relief for holding companies that need no business street address, such a reporting company should arrange for a business street address prior to filing its initial BOI report. The company's initial BOI report will not be accepted without this address.

Advisers should review what address or addresses a reporting company has been using to date on documents such as due diligence forms, tax certifications, tax returns and contracts. An address in care of the company's attorney cannot be used as its business street address for purposes of the company's initial BOI report.

Careful consideration should be taken before using the address of a director, officer or manager as the business street address for a reporting company. The reporting company will be asserting that the individual's address is its principal place of business. Depending on that individual's state of tax residency, the holding company could be exposed to the assertion that it is doing business in that other state, subjecting it to additional state requirements.

Although some registered agents offer the option of a street mailing address in addition to the registered agent's service of process address, it is advised to check the service agreement carefully because it may specify that the entity cannot assert that the mailing address is its place of business. A street mailing address in the state of formation will often be consistent with certifications made regarding tax residency, but may not be usable as a principal place of business address on the BOI report.

Commercial service providers are offering virtual or shared office arrangements. Purchased through the provider's website, these arrangements include services such as:

- a street mailing address;
- scanning and forwarding of mail;
- the use of a meeting or conference room; and
- a standard lease agreement.

This option can provide further support for the holding company's presence in its state of formation, which may have been chosen for favorable tax and company laws.

Once the business street address is determined, a compliance review can reveal whether steps should be taken to update the address with financial institutions, the Internal Revenue Service and service providers. Going forward, the US entity should consistently use the business street address as reported to FinCEN.

Comment

Accurately completing each reporting company's BOI report is very important. Any person who willfully fails to report complete BOI data or provides false BOI data could be fined up to \$10,000, imprisoned for not more than two years, or both. Advisers to families with US entities in their succession planning structures should begin to collect the necessary details, including the street address of each reporting company's principal place of business.

For further information on this topic please contact [Jennie Cherry](#) or [Elizabeth Martin](#) at Kozusko Harris Duncan by telephone (+1 212 980 0010) or email (jcherry@kozlaw.com or emartin@kozlaw.com). Please note that the authors are unable to provide legal advice to non-clients. The Kozusko Harris Duncan website can be accessed at www.kozlaw.com. The authors would like to acknowledge the input provided on this topic by their colleague Sabino Casas.

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